



**FORWARD GROUP**  
Private Client | Corporate | Funds

# **GUIDANCE NOTE FOUNDATIONS**

## Introduction

This Guidance Note is to assist parties to a foundation understand how foundation arrangements work and explain some of the benefits of Jersey foundations.

This document is not tax advice and should not be relied upon as such.

## What is a foundation?

The basic structure of a Jersey foundation has some of the characteristics of a company (such as separate legal personality) and some of the characteristics of a trust (such as the ability to hold assets for the benefit of others). It is a separate type of entity in its own right which cannot be fully defined by reference to a traditional trust or company structure.

A foundation is established by one person (known as a “**founder**”) who typically transfers legal ownership of certain assets (“**foundation property**” or “**foundation assets**”) to another person (known as a “**foundation council member**”) to hold for the benefit of certain other persons (known as “**beneficiaries**”) or for a specified purpose (the “**objects**” of the foundation). The founder does not automatically have any official role or powers in the running of the foundation once it has been established.

Foundations are highly flexible and can be adapted to the founder's needs and circumstances. The founder can number among the beneficiaries and can be one of the council members or even the guardian.

Foundations are also required to have a “**guardian**” who can be an individual or a corporate entity and there may be more than one guardian. The principal role of the guardian is to ensure that the council carries out its functions in order to achieve the objects of the foundation.

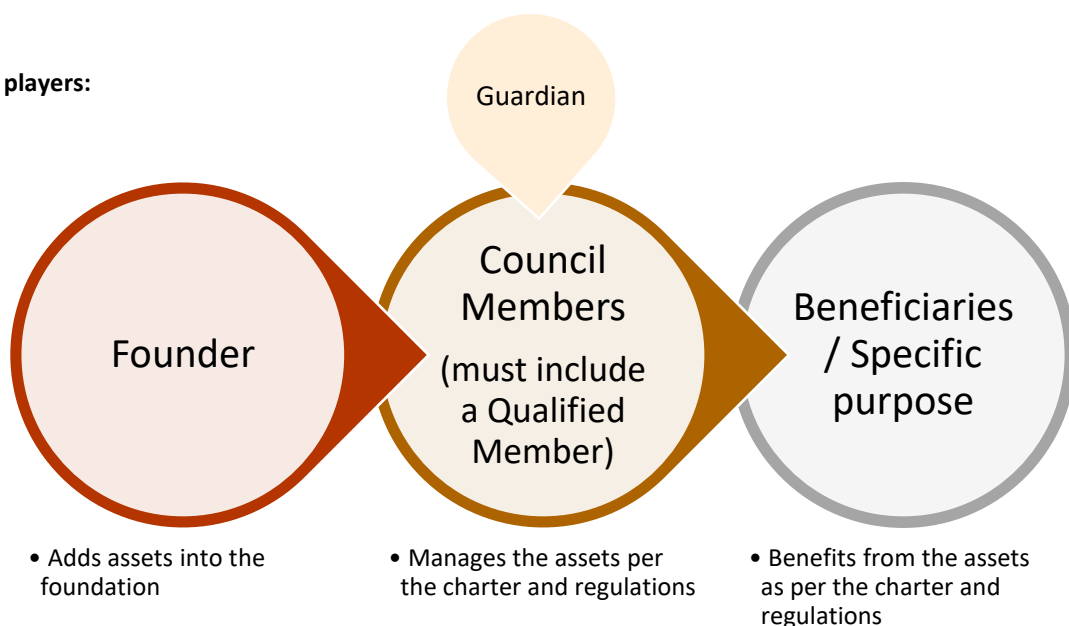
The council is the principal decision-making body of the foundation and must have one Jersey-based member regulated under the Financial Services (Jersey) Law 1998. This person, typically a company rather than an individual, is known as the “**qualified member**” and its role is to ensure that the foundation is administered in compliance with Jersey law. The council's role is to administer the assets of the foundation and carry out its objects with a duty to act in good faith with a view to the best interests of the foundation. This contrasts with a trust whereby the trustee's duties are owed to the beneficiaries of the trust.

The terms upon which the foundation council members hold the assets are set out in documents known as a **charter** and a set of **regulations**. The charter and the regulations are filed with the Jersey Registrar of Companies (the Registrar).

The charter is usually fairly brief as it is available for public inspection on the website of the Registrar. It states the name of the foundation, the objects for which it was established and whether there was an initial endowment. The charter does not need to set out its objectives in great detail nor to name individuals. If the nature of the substantive assets of the foundation needs to be kept private, it is possible to establish a foundation with no (or a nominal) initial endowment, with the substantive assets being transferred into the foundation shortly after its incorporation.

The regulations usually set out the bulk of the provisions governing the foundation and will normally detail the name of any appointed beneficiaries along with details of other relevant parties involved in the running of the foundation. The regulations establish the council and provide for the appointment, retirement, removal and remuneration (if any) of the foundation council members and also set out their decision-making process. In addition, the regulations must also provide for the appointment of a guardian to ensure the accountability of the foundation council.



**The key players:****Uses of foundations**

Foundations are used for a wide variety of purposes which include:

- Carrying out charitable or philanthropic purposes.
- Providing an asset-holding vehicle where using a trust would give rise to difficulties in civil law jurisdictions that do not recognise the concept of a trust.
- Acting as an alternative to a traditional private trust company or as an alternative to the purpose trust that would otherwise be used to hold the shares in a private trust company.
- Holding assets for estate planning purposes.

**Governing laws in Jersey**

Jersey foundations are governed by The Foundations (Jersey) Law 2009 which came into force with effect from 17 July 2009. The qualified member of a foundation must be registered to carry on trust company business which is regulated under the provisions of the Financial Services (Jersey) Law 1998.

**Why Jersey?**

Foundations have long been available around the world however advisors and individuals will naturally wish to establish them in a reputable well-regulated jurisdiction such as Jersey.

What sets Jersey apart as an ideal jurisdiction for foundations is an exceptionally robust regulatory framework and political and economic stability.

- Jersey is recognised as a co-operative jurisdiction by the EU (white-listed);
- Award winning jurisdiction and recognised by for its high standards by: OECD, FATF and MONEYVAL;
- Robust legal framework: independent judiciary;
- 800 years of self-government, not part of the UK;
- English speaking and a minimal time difference to Central Europe; and
- Jersey conforms to the latest EU legislation for General Data Protection Regulation (GDPR).



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